



GUIDELINES

The Newsletter of the New Jersey Executive Commission on Ethical Standards

Holiday 2004

Volume 14, No.2

**28 W. State Street
P.O. Box 082
Room 1407
Trenton, New Jersey 08625
609-292-1892
Web Site: <http://www.state.nj.us/lps/ethics>
Email: ethics@eces.state.nj.us**

Contents

Holiday Parties	Page 1
Gift Guidelines	Page 1
Listing of Charitable Organizations	Page 2
Use of Office Stationery	Page 3
Amendments and New Sections	
- Commission's Rules	Page 4
Ethics Liaison Officers Meetings	Page 5
Commission Cases	Page 5
New Staff Members	Page 7

HOLIDAY PARTIES

The staff receives numerous inquiries during the holiday season about the appropriateness of State employees attending parties hosted by individuals or entities that their agencies deal with in an official capacity. The Commission's Attendance Rules, N.J.A.C. 19:61-6 et seq., are applicable to the majority of these invitations because most are extended to the State official because of his/her official position. In considering whether approval to attend an event should be granted, the Department head or designee, usually the Ethics Liaison Officer, must determine whether the party's host is an "interested party" and whether a legitimate State purpose will be served by attending. An interested party is defined in N.J.A.C. 19:61-6.2 as:

THE EXECUTIVE COMMISSION ON ETHICAL STANDARDS

Chair Brendan T. Byrne, Vice-Chair Susan Bass Levin, Commissioner Bradley M. Campbell, Commissioner James F. Keefe, Esq., Commissioner Sharon A. Harrington, Commissioner Jack Lettiere, Commissioner William L. Librera, Commissioner Seema M. Singh; Executive Director Rita L. Strmensky

1. Any person, or employee, representative or agent thereof, who is or may reasonably be anticipated to be subject to the regulatory, licensing or supervisory authority of the State official's agency;

2. Any supplier, or employee, representative or agency thereof;

3. Any organization that advocates or represents the positions of its members to the State official's agency; or

4. Any organization a majority of whose members are as described in paragraphs 1 through 3 above.

A "person," as used in the definition, is a natural person, association, organization, firm, partnership or corporation. A "supplier" is a private sector person that is providing or seeking to provide or may reasonably be expected to supply goods and/or services to the State official's agency, including but not limited to, consultants, vendors and lessors.

In the case of purely social events sponsored by an interested party, the rule indicates that State officials cannot attend as guests of the sponsor.

GUIDELINES GOVERNING RECEIPT OF GIFTS AND FAVORS BY STATE OFFICERS AND EMPLOYEES

1. Each department shall require full disclosure by employees to the office of the department head through the Ethics Liaison Officer upon receipt of a gift or any other thing of value, from a person, corporation, or association with whom they have had contact in their official capacity.

The cases presented in "Guidelines" are designed to provide State employees with examples of conflicts issues that have been addressed by the Executive Commission. Specific questions regarding a particular situation should be addressed directly to the Commission.

2. Each department should designate an Ethics Liaison Officer to monitor compliance with specific procedures under which officers and employees shall proceed upon receipt of a gift or any other thing of value, from a person, corporation, or association with whom they have had contact in their official capacity.

3. All officers and employees should be instructed that any gift or other thing of value received from a person or corporation with whom they have had contact in their official capacity must be reported and remitted immediately to the Ethics Liaison Officer. Similarly, any favor, service, employment or offer of employment from such person or corporation must be reported immediately.

4. Unsolicited gifts or benefits of trivial or nominal value, such as complimentary articles offered to the public in general, and gifts received as a result of mass advertising mailings to the general business public may be retained by the recipient or the recipient's department for general use if such use does not create an impression of a conflict of interest or a violation of the public trust. An impression of a conflict may be created, for example, if an employee of a regulatory agency uses a pocket calendar conspicuously marked with the name of a company that it regulates or if an office in a State agency displays a wall calendar from a vendor, creating the impression of an endorsement. If circumstances exist which create a reasonable doubt as to the intention with which the gift or benefit was offered, the other paragraphs of these Guidelines govern.

5. The Ethics Liaison Officer shall determine whether the gift, favor, employment, offer of employment, or anything of value was given or offered with the intent to influence or reward the performance of the recipient's public duties and responsibilities, or whether it may be reasonably inferred to have been given or offered with the intent to influence the performance of his or her public duties and responsibilities, or whether the use of the item will create an impression of a conflict of interest or a violation of the public trust.

6. Upon a determination that there was an intent or it could be reasonably inferred that there was an intent to influence the performance of the recipient's public duties and responsibilities, or that the use of the item will create the impression of a conflict or a violation of the public trust, the Ethics Liaison Officer shall return the gift or thing of value to the donor.

7. The Ethics Liaison Officer will have the responsibility of keeping the records of all such occurrences; names of the employees, individuals, and companies involved, and the final disposition of the gift or thing of value.

8. The Commission's rule at *N.J.A.C. 19:61-6.1* et seq. governs acceptance of benefits in connection with attendance at events.

9. The assistance of the Director of the Executive Commission will be available to all Ethics Liaison Officers to aid them in the evaluation of individual cases.

Return of Gifts

If the Ethics Liaison Officer determines that a gift cannot be accepted, the Commission staff recommends that, in the case of non-perishable items, the gift be returned to the donor along with a brief note thanking the individual and advising that State ethics rules prohibit the acceptance of gifts.

Items of a perishable nature should be donated to a charitable organization. Listed below are the names of organizations that have been provided to the staff by various Ethics Liaison Officers.

If you have an organization that you would like to place on this list, please contact Donna Schmitz at (609) 292-1892 or FAX at (609) 633-9252.

Anchor House
482 Center Street
Trenton, NJ 08611
Contact: David Brown
(609) 396-8329

Lift Inc.
225 North Warren Street
Trenton, NJ 08618
Contact: Alma Hill
(609) 695-5456

Martin House
802 East State Street
Trenton, NJ 08606
Contact: Father McCormick
(609) 989-1040

Triad House
2205 Pennsylvania Road
Ewing, NJ 08638
(609) 771-1600

Good Samaritan Center
523 Stevens Street
Camden, NJ 08103

Neighborhood Center
278 Kaighn Avenue
Camden, NJ 08103

Millhouse Convalescent Center
325 Jersey Street
Trenton, NJ 08611
Contact: Kelly Steele
(609) 396-5378

Trenton Soup Kitchen
72 1/2 Escher Street
Trenton, NJ 08605
Contact: Pierine Phayer
(609) 695-5456

Lighthouse Community Ser.
487 Washington Avenue
Newark, NJ
(973) 802-1802

Trenton Rescue Mission
P.O. Box 617
Trenton, NJ 08604
Contact: Executive Director
Leavenhouse
644 State Street
Camden, NJ 08102

Your Food Shelf
1500 Federal Street
Camden, NJ 08105

Cathedral Kitchen
15 N. 7th Street
Camden, NJ 08102

Make a Wish Foundation of NJ
P.O. Box 40281034
Salem Road
Union, NJ 07083
Contact: Norma Godwin
Executive Director
(908) 964-5055
1(800) 252-9474
FAX (908) 964-0082

Tandem Healthcare
Princeton Pike and Franklin Corner Road
Lawrenceville, New Jersey 08648
(609)896-1494

El Centro
1035 Mechanic Street
Camden, NJ 08103

Use of Official Stationery

At its November 9, 2004 meeting, the Commission determined that a State employee's use of official stationery in connection with a personal matter was violative of sections 23(e)(3) and 23(e)(7) of the Conflicts Law and authorized the drafting of a complaint. At that meeting, the Commission members expressed concern about the increase in the misuse of official stationery by State employees and directed the staff to make all State employees aware of the prohibition against such misuse. State stationery may only be used under the conditions set forth in the Commission's stationery guidelines, which appear below.

GUIDELINES GOVERNING THE USE OF OFFICIAL STATIONERY

State officers and employees and special State officers and employees frequently write letters for various purposes which are not always related to their official duties. Questions about the propriety of letters written on State stationery to further the personal interest of the officer or employee or another individual or entity have been addressed to the Executive Commission. To help resolve these questions, the Executive Commission on Ethical Standards has established the following Guidelines to clarify the use of official stationery for purposes other than the conduct of a State agency's business.

Permissible Uses of Official Stationery

The Executive Commission has determined that the following uses of State stationery are generally permissible:

1. To recommend a current or former employee or colleague for another position, admission to a school or program, etc.

Example: Recommending a subordinate for admission to graduate school.

2. To respond to inquiries from a private entity about a current or former employee or colleague.

Example: Providing a character reference for an employee to an adoption agency during the course of the employee's application to adopt a child.

Note: These permissible uses are only acceptable so long as the use of official stationery does not create an impression that the State officer or employee is engaged in an unwarranted use of his or her position. For example, it would not be appropriate for a State employee to recommend an individual for inclusion in a program over which the State employee has supervisory or regulatory authority. In addition, there must be a reasonable connection between the officer's or employee's official duties and the use and purpose of the letter.

Impermissible Uses of Official Stationery

The Executive Commission has determined that the following examples represent clearly impermissible uses of State stationery:

1. To promote a candidate for elective office.

Example: Writing an endorsement of a candidate for the legislature for inclusion in a campaign pamphlet.

2. To endorse a State vendor or contractor.

Example: Writing a letter of general recommendation for a State vendor for dissemination by the vendor. Note,

however, that a letter complimenting the vendor for a job well done may be acceptable even though the vendor may later display the letter.

3. To express a personal opinion on a matter that is not related to one's official duties.

Example: Sending a letter to the editor of a newspaper commenting on a matter that is not related to the duties of the State officer or employee or his or her agency.

4. To secure a personal financial gain or pursue a vested interest for one's self.

Example: Writing to a private contractor (plumber, electrician) demanding a refund or a reduction in a quoted price.

Personal Stationery Imprinted with Agency, Office or Title

The Executive Commission has determined that use of personal stationery imprinted with the agency office or title of a State officer or employee, even though paid for personally, is impermissible. Such stationery may create the appearance of official stationery or may create an impression that the State officer or employee is acting in an official capacity.

The Executive Commission acknowledges that there are occasions when it may be appropriate for a State officer or employee to identify himself or herself by position or title in correspondence on personal stationery (i.e., stationery bearing the individual's name and home address).

Agency Use of Official Stationery for Solicitations

State agencies shall not solicit contributions of any kind from vendors to the agency or from entities regulated by the agency.

Solicitation of any other entities is subject to review and approval by the agency's Ethics Liaison Officer prior to any contact by the agency. The Ethics Liaison Officer must be advised of the purpose of the solicitation, the expected result, the identities of the entities to be solicited, whether there is any personal connection between the agency employees and the solicited entity, and must be provided with a sample of the solicitation letter.

The Ethics Liaison Officer should determine whether the solicitation would be problematic under the agency's code of ethics, the Conflicts of Interest Law, any Guidelines promulgated by the Executive Commission on Ethical Standards, and/or any statutory provisions dealing with charitable contributions. The Ethics Liaison Officer should consider such factors as whether the agency has any business contacts with the recipients of the solicitation, whether any solicited products or services will directly benefit any agency employees, whether the solicitation is of

such magnitude that it could be burdensome to the recipient, and whether the language of the solicitation is coercive.

The Ethics Liaison Officer shall copy the Executive Commission on Ethical Standards on all determinations regarding solicitations.

Circumstances that do not fall within the permissible or impermissible examples above require an individual determination by the Executive Commission. Questions and inquiries should be addressed to: Executive Commission on Ethical Standards, P.O. Box 082, Trenton, New Jersey 08625-0082; (609) 292-1892.

AMENDMENTS AND NEW SECTIONS FOR COMMISSION'S RULES - (N.J.A.C. 19:61-1 et seq.)

Below is a summary of the recent changes to the Commission's rules. The full text of the rules is available on the Commission's website.

An amendment to *N.J.A.C. 19:61-1.4* was necessary because of the statutory increase in the membership of the Commission from seven to nine members (P.L. 2003, c.160). The amendment changes the quorum requirement from four members to five members.

N.J.A.C. 19:61-2.2 contains requirements for agency codes of ethics. There are two amendments to this section. (1) A new subsection (d) requires that agency codes of ethics include a provision that prohibits agency heads and deputy and assistant heads from having contractual or business relationships with employees or officers of the agency, in accordance with the Commission's determination in the Case No. 17-03. (2) A new subsection (e) requires that agency codes of ethics include express notice to agency employees that there are other conflicts/ethics provisions that may apply to their conduct in addition to the agency code of ethics.

The remainder of the rule deals with subchapter 6, which was originally adopted in 1995 and amended in 1997 to formalize standards for State officials regarding attendance at events sponsored by non-State agencies, acceptance of honoraria and compensation for published works and the use of one's official title for private fundraising. The amendments and new rules at *N.J.A.C. 19:61-6* incorporate recent amendments to *N.J.S.A. 52:13D-24* (P.L. 2003, c.255).

At *N.J.A.C. 19:61-6*, the phrase "And Acceptance of Things of Value" was added to the heading to accurately reflect the contents of the subchapter.

At *N.J.A.C. 19:61-6.2*, definitions for the terms "allowable entertainment expenses," "reasonable expenditures for travel or subsistence," and "thing of value" were added. These terms are used in applying the monetary limits on expenses and reimbursements and the limit on accepting gifts in P.L. 2003, c.255.

At *N.J.A.C.* 19:61-6.4, the criteria for benefits that a State official may accept from an interested party were amended by incorporating the new statutory limits and the new statutory distinction between in-State and out-of-State travel. There is no limit on expenditures in New Jersey. However, there is a \$500 limit on out-of-State travel not paid for by the State unless payment is made by (1) a non-profit organization of which the State official is an active member as a result of the payment of a fee or charge for membership to the organization by the State or (2) a non-profit organization that does not contract with the State to provide goods, materials, equipment, or services. No out-of-State travel expenses in excess of the \$500 limit may be paid for by the federal government, a State government other than New Jersey, or a for-profit organization.

At *N.J.A.C.* 19:61-6.5, the criteria for benefits that a State official may accept from an entity other than an interested party were amended by incorporating the new statutory limits and the new statutory distinction between in-State and out-of-State travel that are also added to subsection 6.4.

Two new rules, sections 6.9 and 6.10, have been added to subchapter 6. These rules deal with the language of P.L. 2003, c.255 that permits State officials to accept things of value from lobbyists and legislative agents, with a calendar year limit of \$250.00 per donor.

The two new rules extend the Commission's approach to the provision in section 24 that allows State officers and employees to accept certain benefits, related to their official duties, from parties other than the State. In adopting *N.J.A.C.* 19:61-6.4 and 6.5, the Commission formalized long-standing guidelines that did not permit a State official to accept any thing of value from a party that did business with or interacted with his/her agency, unless the official was making a speech or serving as a panel participant or as a resource person to a speaker or panel participant. The new sections extend the concepts embodied in sections 6.4 and 6.5 and incorporate existing standards of review from the Commission's *Guidelines Governing Receipt of Gifts and Favors by State Offices and Employees*.

New section 6.9 prohibits State officials from taking things of value from "interested parties," which, by definition, includes lobbyists and governmental affairs agents. This prohibition results from reading the new *N.J.S.A.* 52:13D-24.1 with sections 14 (prohibiting a State official from accepting any thing of value that he/she knows or has reason to believe was offered with the intent to influence official duties), 23(e)(6) (prohibiting a State official from accepting any thing of value under circumstances from which it might be reasonably inferred that there was an intent to influence) and 23(e)(7) (prohibiting a State official from knowingly acting in a way that might be reasonably expected to create an impression of a violation of the public trust). The new rule provides direction for the return of things of value. Standards are

provided to determine if items of trivial value can be accepted and used. Recordkeeping is required.

New rule section 6.10 states the conditions under which State officials may accept things of value and/or items of trivial value from entities other than interested parties. Recordkeeping is required.

Language has been added to clarify that the gift restrictions should not be read to apply to gifts from family members, friends and acquaintances. New language has been included in the definition of "thing of value" that a thing of value, as used in the rule, is "offered to or solicited or accepted by a State official in connection with his/her official position."

P.L. 2003, c.255 eliminates previous language that allowed State officials to accept honoraria and/or reasonable fees for speeches. Thus, the appropriate change has been made to *N.J.A.C.* 10:61-6.5 and the first example in that section.

ETHICS LIAISON OFFICERS' MEETINGS - 2005

Ethics Liaison Officers meetings will be held at the Mary Roebling Building located at 20 West State Street, 2nd Floor, Rooms 219/220. The meetings will start at 9:00 a.m.

Wednesday, February 23, 2005

Tuesday, May 24, 2005

Monday, July 25, 2005

Monday, November 21, 2005

COMMISSION CASE NO. 11-04

SUBJECT: Post-Employment.

FACTS: The entity with which the former State employee was employed requested an opinion from the Commission as to whether the former State employee was permitted, under section 17 of the Conflicts Law, to act on behalf of the entity with respect to a project with which he had involvement during his State employment.

RULING: The Commission advised that the former State employee was prohibited from acting on behalf of the firm in connection with the project.

REASONING: When reviewing a post-employment matter, the Commission has used a two-pronged analysis:

1. Is the former employee representing, appearing for, negotiating on behalf of, or providing information or services not generally available to a party other than the State?

2. Was the former employee substantially and directly involved in the matter in question?

In this situation, the first prong of the

Commission's analysis was satisfied because the former employee's activities on behalf of the entity would be representational in nature. In his post-employment capacity, the former employee would serve as his employer's liaison, which involved: representing the entity in dealings with the redeveloper and the community; working collaboratively with his former State agency on the project design, construction scheduling and phasing plans; developing management policies and procedures, shared strategies, staffing plans, budgets and the like in preparation for ongoing operations.

As to the second prong, under Commission precedent, the "matter" in question was defined as the entire project. It was suggested by the entity with which the former State employee was employed that the project could be segmented into several stages and that conceptualization was the only stage with which the former employee had involvement during his State employment. The Commission has a long history of decisions on post-employment cases where projects are multi-faceted, of long duration, or sequential in development. In all of those cases, the Commission has declined to segment the projects for the purposes of the post-employment restriction.

As to the level of the former State employee's involvement, the record was such that the Commission did not agree that the former State employee's role was limited and minimal as opposed to substantial and direct. In considering whether a former State employee had substantial and direct involvement in a project, the Commission has typically reviewed such factors as whether the former State employee had supervisory responsibility, provided input, submitted reports, signed contracts on behalf of the agency, received correspondence, attended meetings, approved applications, had access to confidential information, or was directly involved in decisions affecting the operation of the project. In this situation, the former State employee was one of four agency employees who reviewed and evaluated the responses to the RFP for the development of the project; was copied on memos and letters about the overall project; and met with various outside personnel about the project in general. In addition, throughout 2002, the former State employee was involved in correspondence and meetings about design and financial issues. In 2003, he continued to be involved in exchanges of correspondence and meetings concerning the project. Thus, the former State employee's involvement was substantial and direct under the Commission's precedent.

COMMISSION CASE NO. 13-04

SUBJECT: Post-Employment.

FACTS: The former State employee requested that the Commission consider whether his previous involvement in a landfill closure project precluded him or the law firm with which he was associated from representing a firm in litigation stemming from the closure of the landfill.

RULING: The Commission advised the former State

employee that he was prohibited, under section 17 of the Conflicts Law, from representing a party other than the State in connection with litigation arising from the closure of the landfill. This prohibition did not affect the law firm with which he was associated.

REASONING: When reviewing a post-employment matter, the Commission has used a two-pronged analysis:

1. Is the former employee representing, appearing for, negotiating on behalf of, or providing information or services not generally available to a party other than the State?
2. Was the former employee substantially and directly involved in the matter in question?

In this situation, the first prong of the Commission's analysis was satisfied because the former State employee's activities in the litigation were representational in nature.

As to the second prong, under Commission precedent, the "matter" in question should be defined as the landfill closure. The Commission established, in Case No. 6-99, that a closure project should not be segmented, for the purposes of the post-employment restriction, because of new technologies or changes in regulations. The former employee was substantially and directly involved in the landfill closure while he was a State employee and thus was prohibited from representing a party other than the State in connection with the closure.

The section 17 prohibition also extends to any partnership, firm or corporation in which an affected State official has an interest. "Interest" is defined in section 13 (g) as the ownership or control of more than 10% of the profits, assets or stock of a firm, association, partnership or corporation. In addition, section 13(g), applies the provisions of the Conflicts Law governing the conduct of individuals to shareholders, associates or professional employees of a professional service corporation regardless of the extent or amount of their shareholder interest in such a corporation. The former State employee had no ownership or shareholder interest in the firm, and the firm was not organized as a professional service corporation. Therefore, the restriction did not apply to the firm.

COMMISSION CASE NO. 19-04

SUBJECT: Outside Activity.

FACTS: The State employee requested an opinion from the Commission as to whether he was permitted to continue to serve as an uncompensated member of the Board of Trustees of a nonprofit Law Center that provided assistance to crime victims. The Law Center was the recipient of a State grant. (The grant was not awarded by the State employee's agency.)

RULING: The Commission advised the State employee

that he was permitted to continue to serve on the Law Center Board of Trustees; however, he could have no involvement in the Law Center's grant application and must recuse himself in the event that a Law Center client appeared before his agency.

REASONING: Section 16(b) of the Conflicts Law prohibits representational activity before any State agency. The State employee advised that he would have no involvement in the Law Center's grant application process and would not engage in any representational activity on behalf of the Law Center before any State agency. The Law Center's Executive Director handled all matters involving the Law Center.

As to section 23(e)(1), activity in substantial conflict with official duties, and section 23(e)(5), impairment of objectivity and independence of judgment, the employee's service on the Law Center Board did not appear to be problematic. The Law Center provides legal representation in the courts and provides psychological assistance to crime victims and their families. The Law Center does not provide monetary compensation. In addition, no Law Center clients have appeared before the employee's agency during his tenure. Should such a situation occur, he would recuse himself. Because the his agency's rules require that an individual notify the agency within 20 days of a hearing date if the individual decides to engage an attorney, the employee would have sufficient time to effect a recusal.

As to section 23(e)(7), appearance of impropriety, it is unlikely that a member of the public would view his service on the Law Center Board as violative of the public trust. The Law Center receives no funding from the employee's agency, has not represented clients before the agency, and the employee is not involved in the day-to-day operation of the Law Center. While the agency and the Law Center have complimentary missions, there was no overlap between their activities.

New Staff Members. The Commission recently welcomed two new employees. Jose A. Fernandez, Esq. joined the staff as a Legal Specialist/Investigator. Jose received a Law Degree from the University at Buffalo Law School and an MBA from Northern Arizona University. He was previously employed as a legal consultant in corporate litigation. Jose is the contact person for the Commission's on-line training and is available to respond to legal questions regarding the applicability of the Conflicts Law and Commission Rules and Guidelines.

Ebony Vaught joined the staff as a Clerk Typist. Ebony is a graduate of Ewing High School and has 4 years of previous clerical experience. In addition to her other responsibilities, Ebony is assisting in the preparation of Commission opinions for on-line publication.

Regarding "Guidelines"

Please direct any comments or questions about "Guidelines" to

**Jeanne A. Mayer, Esq., Deputy Director,
Executive Commission on Ethical Standards,
P.O. Box 082
Trenton, NJ 08625
(609) 292-1892**

**The Commission's newsletters are also
available online at :**

<http://www.state.nj.us/lps/ethics/newsltrs.htm>